

NO. 85549-8

THE SUPREME COURT OF THE STATE OF WASHINGTON
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STATE OF WASHINGTON,

Respondent,

v.

JOHN R. HURST,

Petitioner.

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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

PETITIONER'S SUPPLEMENTAL BRIEF

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ORIGINAL

TABLE OF CONTENTS

| | |
|--|----|
| A. ISSUE FOR WHICH REVIEW HAS BEEN GRANTED | 1 |
| B. STATEMENT OF THE CASE | 1 |
| C. ARGUMENT | 4 |
| THE DEPRIVATION OF LIBERTY AT STAKE IN THE EXTENDED DETENTION OF A PERSON WHO IS NOT COMPETENT TO STAND TRIAL REQUIRES THE STATE TO BEAR THE BURDEN OF PROVING THE BASIS FOR CONTINUED CONFINEMENT BY CLEAR AND CONVINCING EVIDENCE | 4 |
| 1. A person accused of a crime has a fundamental right not to be tried while incompetent | 4 |
| 2. A committed person has a right not to be held for longer than necessary based on without holding the State to a significant burden of proof | 9 |
| 3. The Court of Appeals decision rests on a flawed interpretation of the statute | 16 |
| D. CONCLUSION | 22 |

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

| | |
|--|---|
| <u>Born v. Thompson</u> , 154 Wn.2d 749, 117 P.3d 1098 (2005) .. | 10, 11, 12, 13, 14, 15, 17, 18, 19, 21 |
| <u>In re Det. of Hawkins</u> , 169 Wn.2d 796, 238 P.3d 1175 (2011) . | 9, 19 |
| <u>In re Quesnell</u> , 83 Wn.2d 224, 517 P.2d 568 (1973) | 20 |
| <u>State v. Bobic</u> , 140 Wn.2d 250, 996 P.2d 610 (2000)..... | 19 |
| <u>State v. Durham</u> , 39 Wn.2d 781, 238 P.2d 1201 (1951)..... | 20 |
| <u>State v. Henke</u> , 196 Wash. 185, 82 P.2d 544 (1938). | 5 |
| <u>State v. LaBelle</u> , 107 Wn.2d 196, 728 P.2d 138 (1986)..... | 9, 11, 14 |

Washington Court of Appeals Decisions

| | |
|---|-------|
| <u>State v. Carneh</u> , 149 Wn.App. 402, 203 P.3d 1073, <u>rev. denied</u> , 166 Wn.2d 1030 (2009)..... | 8, 12 |
| <u>State v. Hernandez-Ramirez</u> , 129 Wn.App. 504, 119 P.3d 880 (2005) | 16 |
| <u>State v. Hurst</u> , 158 Wn.App. 803, 244 P.3d 544 (2010), <u>rev.</u> <u>granted</u> , 171 Wn.2d 1016 (2011) | 5, 16 |
| <u>Weiss v. Thompson</u> , 120 Wn.App. 402, 85 P.3d 944 (2004)..... | 7 |

United States Supreme Court Decisions

| | |
|---|-------|
| <u>Addington v. Texas</u> , 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979) | 5, 11 |
| <u>Cooper v. Oklahoma</u> , 517 U.S. 348, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996) | 5 |

| | |
|---|----------------------|
| <u>Drope v. Missouri</u> , 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975) | 5 |
| <u>Dusky v. United States</u> , 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960) | 6 |
| <u>Humphrey v. Cady</u> , 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972) | 9 |
| <u>Jackson v. Indiana</u> , 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972) | 5 |
| <u>Medina v. California</u> , 505 U.S. 437, 112 S.Ct. 2572, 120 L.Ed.2d 498 (1996) | 16 |
| <u>Sell v. United States</u> , 539 U.S. 166, 123 S.Ct. 2174 (2003) | 9, 12, 14, 15, 16 |

Federal Decisions

| | |
|---|----|
| <u>United States v. Ruiz-Gaxiola</u> , 623 F.3d 684 (9 th Cir. 2010) | 15 |
|---|----|

United States Constitution

| | |
|----------------------------|------|
| Fifth Amendment | 9 |
| Fourteenth Amendment | 5, 9 |

Washington Constitution

| | |
|----------------------|------|
| Article I, § 3 | 5, 9 |
|----------------------|------|

Statutes

| | |
|-----------------------------------|----------------|
| Former RCW 10.77.090 (2006) | 10, 14, 17, 19 |
| RCW 10.77.010 | 6 |

| | |
|---------------------|-------------------|
| RCW 10.77.060 | 7, 13 |
| RCW 10.77.084 | 7 |
| RCW 10.77.086 | 7, 10, 13, 16, 17 |
| RCW 10.77.088 | 17, 18 |
| RCW 71.05.240 | 9 |
| RCW 71.05.310 | 9, 14 |
| RCW 9A.12.010 | 21 |
| RCW 9A.20.021 | 14 |
| RCW 9A.36.031 | 21 |

Court Rules

| | |
|---------------|---|
| CrR 3.3 | 5 |
|---------------|---|

Other Authorities

| | |
|---|----|
| House Substitute Bill Report, SSB 5533 (April 9, 2007) | 17 |
| Laws 2007, ch. 375 | 18 |
| Senate Substitute Bill Report, SSB 5533 (April 9, 2007) | 18 |

A. ISSUE FOR WHICH REVIEW HAS BEEN GRANTED.

Was John Hurst denied his right to liberty and due process of law when the court stayed his criminal case and detained him for over one year in an effort to render him competent to stand trial based on a preponderance of the evidence standard of proof, when, in the civil commitment setting, or in any misdemeanor case, the State would bear the risk of error and have to prove he met the criteria for continued commitment by clear and convincing evidence?

B. STATEMENT OF THE CASE.

As John Hurst was finishing emergency room treatment at Swedish Hospital, a nurse asked him to move from a hospital bed. CP 2. Hurst cursed at her, hit her once in the face, and threw a shoe at her. Id. The nurse was not harmed. Id. The probable cause certification summarizing the incident notes that Hurst was scheduled for an appointment later the same day to adjust his psychiatric medications. Id.

Hurst was charged with third degree assault for intentionally threatening bodily harm to a licensed nurse. CP 1. His standard range sentence for that offense, if convicted, was three to eight

months.¹ Before he could be arraigned, the court sent him to Western State Hospital for a competency evaluation. CP 8-9. The experts agreed Hurst was incompetent to stand trial. CP 19-20, 45.

While in custody for competency treatment, Hurst continued to hear voices who told him what to do, such as the voice of Scott Jorden who told him to hit the nurse because "she was doing something with nuclear radiation." 2/3/09a.m.RP 16, 19. Hurst described Jorden as an FBI agent who spoke to him through an implant in his ear or arm and controlled his actions; there was no evidence Jorden was a real person. Id. at 17, 35.

Even though Hurst generally complied with prescribed medications, he remained beholden to the voices in his head and his fixed delusions continued unabated. 2/3/09p.m.RP 26. His delusions undermined his ability to understand the legal proceedings and assist his counsel. Id. He believed he would prevail in the criminal case by a defense of entrapment, because the person controlling his actions was an FBI agent. Id.

¹ The State's bail application lists Hurst's prior convictions as including one felony conviction along with numerous nonfelony convictions. CP 3. Because Hurst's criminal history was not established during trial proceedings, counsel assumes for purposes of argument that Hurst would have an offender score of "1." A scoring sheet containing the standard sentencing range is attached as Appendix A.

Notwithstanding ten months of efforts to render him competent, Hurst told the court that the "shrinks" were "stupid" for not understanding he worked with the FBI and the voices he heard were "police technology" devices implanted at Harborview as part of his work as an undercover police officer. 1/23/09RP 13-14, 18. Based on Hurst's in-court remarks and unanimous expert opinion, the trial judge found no factual dispute as to Hurst's continued incompetency when the State requested a third competency treatment period lasting 180 days Id. at 16; CP 45.

Hurst requested that the State bear the risk of error at this stage in proceedings, which necessarily follows two failed 90-day periods of attempted competency restoration. He asked that the State prove the basis for further detention by clear and convincing evidence. CP 22-24; 1/28/09RP 8-10. The court ruled that the State's burden of proof was only a preponderance of evidence. 1/28/09RP 32.

At a jury trial on whether Hurst could be further detained for the State to try to render him competent for trial, the State told the jury that it needed to meet only the "very low threshold" of a probability that Hurst could become competent after further treatment. 2/5/09RP 20-21, 50. It insisted its goal was simply to

give Hurst the "treatment" he desperately needed. 2/5/09RP 22.

The jury was not informed that Hurst could receive treatment through civil commitment if it found he was not likely to attain trial competency. Id. at 56; CP 74.

The jury permitted the 180-day commitment, but Hurst never became competent to stand trial. CP 76-77. The court dismissed the criminal charge and detained Hurst so the State could file a civil commitment petition. CP 77-78.²

C. ARGUMENT.

THE DEPRIVATION OF LIBERTY AT STAKE IN THE
EXTENDED DETENTION OF A PERSON WHO IS
NOT COMPETENT TO STAND TRIAL REQUIRES
THE STATE TO BEAR THE BURDEN OF PROVING
THE BASIS FOR CONTINUED CONFINEMENT BY
CLEAR AND CONVINCING EVIDENCE

1. A person accused of a crime has a fundamental right not to be tried while incompetent. It is unquestionably a fundamental right not to be tried while incompetent. Cooper v. Oklahoma, 517 U.S. 348, 354, 116 S.Ct. 1373, 134 L.Ed.2d 498 (1996); Drope v. Missouri, 420 U.S. 162, 171-72, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975) (accused person's competency to stand trial is "fundamental

to an adversary system of justice”); U.S. Const. amend. 14; Wash. Const. art. I, § 3. Washington has long recognized that “an accused person cannot be lawfully tried, convicted, or sentenced while he is in a state of insanity.” State v. Henke, 196 Wash. 185, 191, 82 P.2d 544 (1938).

Incompetency further impinges on an accused person’s rights, because it allows the State to delay a trial, involuntarily commit a person, and potentially administer forced medication. See Jackson v. Indiana, 406 U.S. 715, 738, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972) (violates due process to hold person indefinitely based on incompetence to stand trial); Addington v. Texas, 441 U.S. 418, 426, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979) (civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection”); CrR 3.3(e)(1) (excluding “all proceedings relating to” competency to stand trial from speedy trial calculation). Consequently, a person like Hurst, who believes he is competent and wishes to proceed with trial, suffers the impairment of his rights to have a speedy trial,

² The Court of Appeals ruled there was continuing and substantial public interest in reviewing the case notwithstanding its potential mootness. State v. Hurst, 158 Wn.App. 803, 805 n.1, 244 P.3d 544 (2010), rev. granted, 171 Wn.2d 1016 (2011).

to be at liberty rather than confined while the State attempts to "restore" competency, and to decline unwanted treatment.

Competency to stand trial requires the accused person have both (1) "a rational as well as factual understanding of the proceedings against him" and, (2) "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct 788, 4 L.Ed.2d 824 (1960) (internal quotation marks omitted); RCW 10.77.010(14) (defining incompetence to stand trial as when "a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect").

Pursuant to our statutory scheme, when a person is charged with a felony offense and there is "reason to doubt his competency," the following proceedings may or must occur, as pertinent to the case at bar:

(1) The court must order an evaluation for a period of time not to exceed 15 days, resulting in a written report. RCW 10.77.060(1)(a).³

³ The 15-day evaluation clock runs from the time the person is admitted into the evaluating facility. RCW 10.77.060(1)(a). There may be long delays for admission into an evaluating facility, during which time the criminal case remains stayed. See Weiss v. Thompson, 120 Wn.App. 402, 409, 85 P.3d 944 (2004).

(2) If the court finds the defendant is incompetent, it must stay the criminal case. RCW 10.77.084(1)(a).

(3) The court may order the defendant committed for up to 90 days evaluation and treatment. RCW 10.77.086(1).

(4) If the court finds by a preponderance of the evidence that the defendant remains incompetent, it may extend the order of commitment for an additional ninety-day period. RCW 10.77.086(3).

(5) After the second 90-day commitment, the court may order an additional, 180-day, commitment if the court or a jury finds:

(a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time.

RCW 10.77.086(4) (full text attached as Appendix A). At any time, the State may institute civil commitment proceedings in lieu of holding the person based solely on the criminal charges. RCW 10.77.086(4). If the accused person becomes competent to stand trial, the prosecution may be reinstated. See State v. Carneh, 149 Wn.App. 402, 203 P.3d 1073, rev. denied, 166 Wn.2d 1030 (2009) (case stayed intermittently for over seven years due to defendant's incompetency).

Hurst remained incompetent to stand trial from March 31, 2008 through the 2009 trial.⁴ He had been confined for more than 10 months of competency restoration efforts when the trial began on whether he could be held for another six months so the State could continue to try to render him competent. CP 8; CP 45-46. At the time the State sought this third, 180-day, commitment, Hurst requested that the State prove the probability he could be rendered competent by clear and convincing evidence. CP 22-24. The court refused and the prosecution told the jury that it needed to find only a "very low threshold" of evidence to continue Hurst's commitment. 1/28/09RP 32; 2/5/09RP 20-21, 50.

⁴ The charged incident occurred on March 11, 2008. CP 1. The court ordered a competency evaluation on March 31, 2008. CP 8. The evaluators agreed he remained incompetent through two 90-day efforts at treatment. 2/3/09a.m.RP 30-31. Hurst selected a jury for his trial on whether he could be confined for a third "treatment" period on February 2, 2009. The criminal case remained stayed throughout.

2. A committed person has a right not to be held for longer than necessary based on without holding the State to a significant burden of proof. The State may not deprive an individual of liberty without due process of law. Sell v. United States, 539 U.S. 166, 178-79, 123 S.Ct. 2174 (2003); U.S. Const. amends. 5, 14; Wash. Const. art. I, § 3. This individual liberty interest includes the significant, constitutionally-protected interest in avoiding unwanted detention or psychiatric treatment. See Sell, 539 U.S. at 179. Commitment for any purpose is a "massive curtailment of liberty," Humphrey v. Cady, 405 U.S. 504, 509, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972), requiring this Court to "narrowly construe" a statute that involves the deprivation of liberty. In re Det. of Hawkins, 169 Wn.2d 796, 801, 238 P.3d 1175 (2011)).

In order for the State to civilly commit a person longer than 14 days, the State must prove the basis for commitment by clear and convincing evidence. State v. LaBelle, 107 Wn.2d 196, 201, 728 P.2d 138 (1986); RCW 71.05.240; RCW 71.05.310. The clear and convincing evidence standard of proof is also required in any misdemeanor case where the defendant is incompetent to stand trial and the State wishes to detain the person for any length of

time to attempt to render her competent. Born v. Thompson, 154 Wn.2d 749, 761, 117 P.3d 1098 (2005).

The statute at issue in Born permitted the State to detain a person accused of a misdemeanor for up to 15 days for a competency evaluation, followed by up to 14 days for treatment if found incompetent. Id. at 752 n.3; former RCW 10.77.090(1)(d)(i)(A-C) (2006). The statute did not specify what standard of proof applied at a hearing to determine whether a person charged with a misdemeanor may be detained for treatment aimed at rendering the person competent for trial. Id. at 753. Because the statute did not contain a standard of proof, this Court reviewed the importance of the various rights at stake when a person is detained due to his incompetency to stand trial. 154 Wn.2d at 759-61.

Hurst raises the same claim as Born and the same analysis applies. Like Born, the statute does not specify the standard of proof that applies in order for the State to detain him for a third period of time to attempt to render him competent. RCW 10.77.086; cf. former RCW 10.77.090(1)(c) (2006). In the face of statutory silence, the court determines the appropriate standard of

proof by considering the rights and interests at stake. Born, 154 Wn.2d at 754-59, 761.

The principle question in determining the standard of proof is which party should bear a greater risk of error. Born, 154 Wn.2d at 760. In a civil commitment lasting longer than 14 days, the State bears the burden of proving the detainee meets the criteria for commitment by clear and convincing evidence. LaBelle, 107 Wn.2d at 221-22; see Addington, 441 U.S. at 427. The State bears the risk of an erroneous decision because it has the tools at its disposal to evaluate a detained person's mental condition and the potential for restoration. Born, 154 Wn.2d at 757-58, 761.

"[W]ithout question a 'commitment for any purpose is a significant deprivation of liberty that requires due process of law.'" Id. at 755 (quoting Addington, 441 U.S. at 425). Hurst has a fundamental interest in not being involuntarily detained while his criminal case is stayed.

The government has interests in public safety and prosecuting crimes. The public safety interest is mitigated by the availability of civil commitment for an individual who is dangerous due to a mental illness. Id. at 756. The relative importance of prosecuting crimes correlates to the seriousness of the individual

crime charged. Id.; see Sell, 539 U.S. at 180 (courts "must consider the facts of the individual case in evaluating the Government's interest in prosecution").

The government may have a greater interest in prosecuting felonies than misdemeanors, as the court recognized in Born, but not all felonies are of equal magnitude. Id.; see Sell, 539 U.S. at 180. Even for a serious crime, a person's incompetency to stand trial simply defers a potential prosecution, and the State may reinstitute proceedings if has a basis to believe the person has become competent. See Carneh, 149 Wn.App. at 410-11 (State may refile charges dismissed due to incompetency whenever good faith basis to believe restoration may be possible).

In deciding who should bear the risk of error, the Born Court considered that the pre-trial stage in a criminal case, the "proof" of the charged crime generally consists of a cursory police summary. Born, 154 Wn.2d at 758 (contrasting competency detention to civil commitment where probable cause court hearing held within 72 hours of detention). At the same time, the accused person remains incompetent to stand trial and thus is not a reliable source of information to challenge claims of dangerousness or the likelihood of restoration. Id. at 761.

Before the State's third attempt at rendering a person competent, it will have necessarily held and treated him for at least 195 days. RCW 10.77.086(1), (2). It will have closely observed the person's behavior, reviewed his mental health history, and tried various avenues of treatment for an extended period of time. See RCW 10.77.060 (requiring examination and detailed report on detained person's mental condition); CP 9-10 (ordering hospital to report on Hurst's diagnosis, amenability to treatment, and dangerousness). The State should be well-equipped to justify its claim that there is a substantial probability the further detention is will result in the accused's competency to stand trial, while the incompetency of accused person "may impede" investigation into the basis for extended commitment. 154 Wn.2d at 761.

The Born Court ruled that in order a hold a person facing a misdemeanor charge for a single 14-day commitment while the State seeks to render the person competent, the State must prove

the person meets the criteria for such commitment by clear and convincing evidence.⁵ 154 Wn.2d at 754, 761.

It rejected the preponderance of the evidence standard of proof as an unfair allocation of the risk of error even though this standard provides adequate due process protection for a 14-day civil commitment. In civil commitment cases, the State must justify a commitment by clear and convincing evidence if it lasts longer than 14 days, but may use a preponderance standard for a 14-day commitment. LaBelle, 107 Wn.2d at 221; RCW 71.05.310. But in a misdemeanor prosecution, the State bears a heavier risk of error to commit a person for the purpose of trying to render him competent to stand trial. 154 Wn.2d at 758, 760-61. This high standard of proof applies even though the duration of the commitment for competency is limited to a maximum of 29 days, and a person convicted of a gross misdemeanor could receive a sentence up to one year. Id. at 757; see RCW 9A.20.021(2), (3).

Similarly to Born, in Sell the Supreme Court weighed the interests involved to determine when a state may involuntarily

⁵ Before Born, a person could be committed for competency restoration for any nonfelony if it qualified as a violent act or based upon prior violent acts in the individual's history. Former RCW 10.77.090(d). The current statute requires a nonfelony that qualifies as a "serious offense" as defined by statute. RCW

medicate a person for the purpose of rendering him competent to stand trial. 539 U.S. at 178-82. The Court identified significant constitutionally protected interests at stake when the government wants to administer drugs in an effort to render a person competent to stand trial. Id. at 178-79. In order to overcome a person's fundamental right to refuse invasive involuntary treatment, and in light of the pretrial status of the charges, the State's interest must be "essential" and "overriding." Id. at 179.⁶ Due to the important liberty interests at stake, courts have uniformly interpreted Sell to require proof of the criteria by clear and convincing evidence.

United States v. Ruiz-Gaxiola, 623 F.3d 684, 692 (9th Cir. 2010).

Under the framework of Sell and Born, the State should bear the risk of error when trying to involuntarily detaining a person for another 180 days after two failed efforts at rendering the person competent for trial. Further, the State should shoulder the heavier

10.77.088.

⁶ Under Sell, a court may order involuntary medications to restore competency for trial only after finding, by clear and convincing evidence: (1) important the governmental interests are at stake; (2) involuntary medication with significantly further those interests without significant interference with the defendant's right to a fair trial; (3) the medication is necessary to further the state interests; and (3) no less intrusive alternative is available. 539 U.S. at 181; State v. Hernandez-Ramirez, 129 Wn.App. 504, 510-11, 119 P.3d 880 (2005).

burden of proof of clear and convincing evidence given (1) the fundamental individual rights at stake when a criminal case has been stayed for at least 195 days, (2) the fact that the accused person is simply charged with a crime without having the allegations vetted by a court, and (3) the State's certain ability to muster evidence about the accused's mental status having already detained the person for over six months.

3. The Court of Appeals decision rests on a flawed interpretation of the statute. The Court of Appeals declined to weigh the individual's interests or rights at stake under the theory that it must defer to the legislature's determination of the standard of proof. Hurst, 158 Wn.App. at 808.⁷ Although the statute is silent as to what burden of proof applies at the third hearing for a 180-day competency commitment, it sets forth a "preponderance of the evidence" standard for the 90-day commitment. RCW 10.77.086(2), (4). The Court of Appeals perceived the legislature

⁷ The Court of Appeals cited Medina v. California, 505 U.S. 437, 445, 112 S.Ct. 2572, 120 L.Ed.2d 498 (1996), in which the Supreme Court explained its deference to a legislature's determination of the standard of proof in a criminal case because that is "more the business of the States than it is of the Federal Government." But no such deference applies when the legislature has not expressly determined the standard of proof. The Petition for Review contains further discussion of the Court of Appeals' erroneous reliance on Medina, at 9-11.

intended the preponderance of the evidence standard to govern the 180-day commitment even though this intent is nowhere stated in the statute itself. When confronted by the same statutory language in Born, this Court interpreted the statute as not containing a standard of proof, rather than assuming that the legislature inevitably intended the preponderance of evidence standard would apply to all hearings. See Born, 154 Wn.2d at 753 (referencing similar language in Former RCW 10.77.090(1) (2006)).

RCW 10.77.086 was enacted in 2007, when the legislature revised the competency procedures after Born. At that time, the legislature separated the felony and misdemeanor competency procedures into separate statutes. See RCW 10.77.086; RCW 10.77.088; former RCW 10.77.090 (2006). But the legislature did not consider the competency requirements for felony cases. The proposed bills and bill reports document the lack of attention to felony procedures. House Substitute Bill Report, SSB 5533, at 3 (April 9, 2007) ("There are no substantive changes to the felony competency procedure. The statutes are only reorganized into a new section.").⁸ The public testimony offered on the bill explained

⁸ Available at:
<http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5533&year=2007>.

that it "focuses on the least serious of offenders," and was targeted toward getting community-based treatment for mentally ill offenders. Id. at 4; see Laws 2007, ch. 375, § 1 (discussing legislature's finding that the "needs of individuals with mental illness and the public safety needs of society at large are better served" by providing "an opportunity to obtain treatment and support."). The synopsis of the competency detention procedures in the bill reports did not mention the 180-commitment period. House Substitute Bill Report, SSB 5533, at 2 (mentioning only two 90-day commitment periods for competency restoration efforts); Senate Substitute Bill Report, SSB 5533 (April 9, 2007) (containing no discussion of felony 180-day commitment).

The Court of Appeals' expectation that the legislature would have necessarily considered and stated the standard of proof in the statute is further undermined by text of RCW 10.77.088, the misdemeanor statute enacted after Born. RCW 10.77.088 nowhere references the clear and convincing evidence standard of proof required by Born. 154 Wn.2d at 761. It is silent as to what burden of proof applies at the hearing on whether a person may be detained for competency restoration. RCW 10.77.088. The legislature's failure to state the burden of proof does not mean it

intended the preponderance of the evidence standard to apply, rather, it demonstrates that it deferred to this Court's judgment as to the appropriate standard of proof. See State v. Bobic, 140 Wn.2d 250, 264, 996 P.2d 610 (2000) ("when our Legislature enacts a statute, it is presumed to be familiar with judicial interpretations of statutes and, absent an indication it intended to overrule a particular interpretation, amendments are presumed to be consistent with previous judicial decisions.").

When any statutory standard is ambiguous in a criminal case, the principle of lenity requires the court to interpret the statute in the light most favorable to the defense. Hawkins, 169 Wn.2d at 801. The statute does not contain a standard of proof for the 180-day commitment, as this Court ruled in Born, 154 Wn.2d at 753, when construing similar language in former RCW 10.77.090(1). Thus, the Court of Appeals erred by insisting it must defer to a legislative determination of the standard of proof when the legislature had not made such a determination.

In its Response Brief, the State offered a lengthy citation of statutes from other states for the proposition that the clear and convincing standard is not deeply rooted and fundamental to our system of justice. Resp. Brf. at 15-16. The list of citations is

deceiving, because they largely involve the standard of proof to determine competency to stand trial, and not the standard of proof for detention aimed at rendering a person competent. See Reply Brief, at 2-3 (analyzing various state statutes).

The State also insisted that Hurst may not assert a right that does not draw from deeply rooted history, and claimed there is no historical basis for holding the State to a higher standard of proof to commit a person during criminal proceedings. But the paucity of respect and dignity accorded to people with mental illness in the past is not one to which we aspire in the present day. There were many years in which the constitutional rights of people facing involuntary commitment were ignored and instead, people with mental illness were "railroad[ed]" into state-supported asylums without meaningful oversight. In re Quesnell, 83 Wn.2d 224, 227-28, 517 P.2d 568 (1973). Additionally, in earlier cases, the jury could decide whether a person was competent to stand trial at the same time it decided the merits of the accusations, which is not a procedure supported by contemporary practice. See e.g., State v. Durham, 39 Wn.2d 781, 782, 238 P.2d 1201 (1951). Due process requires not only formal procedures, but also substantive respect for individual rights by commanding adequate constitutional

safeguards and the appropriate allocation of the risk of error, as this Court recognized in Born.

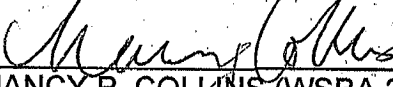
Hurst was charged with a simple assault aggravated to a class C felony based on the victim's job status. RCW 9A.36.031(i). Put another way, if Hurst had hit or thrown a shoe at a desk clerk, he could be charged only with a misdemeanor assault, but because he hit a licensed nurse, he was charged with a felony. Hurst faced a standard range sentence of three to eight months, assuming the State could obtain a conviction. The underlying incident occurred due to Hurst's fixed delusional belief that an FBI agent communicated with him via an implant in his body, controlled his hands, and forced him to hit the nurse. If he had a trial, the State would have to prove he intentionally assaulted the nurse at a time when he understood the difference between right and wrong. RCW 9A.12.010 (definition of insanity). Due to the auditory hallucinations and unabated delusional beliefs that kept him from being competent to stand trial despite the State's extended treatment efforts, no continued confinement should be justified without the State proving the need for further detention by clear and convincing evidence.

D. CONCLUSION.

For the foregoing reasons, this Court should hold that in applying a preponderance rather than a clear and convincing burden of proof, the court violated Mr. Hurst's right to liberty without affording the necessary due process of law.

DATED this 30th day of June 2011.

Respectfully submitted,


NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project (91052)
Attorneys for Petitioner

APPENDIX A
(Third Degree Assault Scoring Sheet
Adult Sentencing Manual)

ASSAULT, THIRD DEGREE

(OTHER THAN "ASSAULT OF A POLICE OFFICER WITH A PROJECTILE STUN GUN" (RCW 9A.36.031(1)(H))

(RCW 9A.36.031(1)(a) through (g) and (i)

CLASS C - NONVIOLENT

CRIME AGAINST A PERSON (RCW 9A.4A.411(2))

I. OFFENDER SCORING (RCW 9.94A.525(7))

ADULT HISTORY:

Enter number of felony convictions x 1 = _____

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions x 1 = _____

Enter number of nonviolent felony dispositions x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other felony convictions x 1 = _____

STATUS: Was the offender on community custody on the date the current offense was committed? (If yes), + 1 = _____

Total the last column to get the Offender Score
(Round down to the nearest whole number)

II. SENTENCE RANGE

| A. OFFENDER SCORE: | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 or more |
|-------------------------------|-----------------|-----------------|------------------|------------------|--------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
| STANDARD RANGE (LEVEL III) | 1 - 3 months | 3 - 8 months | 4 - 12 months | 9 - 12 months | 12+ - 16 months | 17 - 22 months | 22 - 29 months | 33 - 43 months | 43 - 57 months | 51 - 60* months |

B. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-8 or III-9 to calculate the enhanced sentence.

C. If a sentence is one year or less: community custody may be ordered for up to one year (See RCW 9.94A.545 for applicable situations).

D. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 9 to 18 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).

E. For a finding that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2006, see page III-10, Sexual Motivation Enhancement - Form C.

F. If the current offense was a gang-related felony and the court found the offender involved a minor in the commission of the offense by threat or by compensation (RCW 9.94A.833), the standard sentencing range for the current offense is multiplied by 125%. See RCW 9.94A.533(10).

- *Statutory maximum sentence is 60 months (5 years) (RCW 9A.20.021(1)).

III. SENTENCING OPTIONS

- First-Time Offender Wavler; for eligibility and sentencing rules; See RCW 9.94A.3650
- Alternative to Total Confinement; for eligibility and rules see RCW 9.94A.680.
- Work Ethic Camp; for eligibility and sentencing rules see RCW 9.94A.690.
- Drug Offender Sentencing Alternative; for eligibility and sentencing rules see RCW 9.94A.660.

Although the Washington Sentencing Guidelines Commission does all that it can to assure the accuracy of its publications, the scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Guidelines Commission.

APPENDIX B
(RCW 10.77.086)

RCW 10.77.086. Commitment--Procedure in felony charge

(1) If the defendant is charged with a felony and determined to be incompetent, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, or has been determined unlikely to regain competency pursuant to RCW 10.77.084(1)(c), but in any event for a period of no longer than ninety days, the court:

(a) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for evaluation and treatment; or

(b) May alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person.

(2) On or before expiration of the initial ninety-day period of commitment under subsection (1) of this section the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent.

(3) If the court finds by a preponderance of the evidence that a defendant charged with a felony is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety-day period, but the court must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second ninety-day period. The defendant, the defendant's attorney, or the prosecutor has the right to demand that the hearing be before a jury. No extension shall be ordered for a second ninety-day period, nor for any subsequent period as provided in subsection (4) of this section, if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension.

(4) For persons charged with a felony, at the hearing upon the expiration of the second ninety-day period or at the end of the first ninety-day period, in the case of a defendant with a developmental disability, if the jury or court finds that the defendant is incompetent,

the charges shall be dismissed without prejudice, and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. The criminal charges shall not be dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for up to an additional six months.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN HURST,

Petitioner.

NO. 85549-8

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30TH DAY OF JUNE, 2011, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DONNA WISE, DPA
KING COUNTY PROSECUTOR'S OFFICE
APPELLATE UNIT
516 THIRD AVENUE, W-554
SEATTLE, WA 98104

(X) U.S. MAIL
() HAND DELIVERY
() _____

SIGNED IN SEATTLE, WASHINGTON THIS 30TH DAY OF JUNE, 2011.

X _____



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